



Department
for Education

The National Pupil Database, Individual Learner Records and/or HESA Student Record

Agreement for the supply of linked data

October 2016

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THIS AGREEMENT is made on the date specified in the Schedule.

BETWEEN:

- (1) The **DISCLOSING PARTIES** whose details are specified in the Schedule
- (2) The **REQUESTER** whose details are specified in the Schedule

who together are known as "**the Parties**"

1. INTRODUCTION

- 1.1. The Higher Education Statistics Agency Limited ("HESA") is responsible for the collection and management of the HESA Student Record. The content of the HESA Student Record is determined by HESA's statutory customers. Higher Education Funding Council for England ("HEFCE") is one of HESA's statutory customers and data from English higher education institutions is collected by HESA under HEFCE's statutory authority. For the purposes of this Agreement, HESA & HEFCE are joint data controllers of the HESA Student Record and are jointly responsible for the decision to release HESA Data.
- 1.2. The Department for Education ("DfE") is responsible for the collation and management of the National Pupil Database (NPD). For the purposes of this Agreement, DfE is the Data Controller of the NPD Data.
- 1.3. The DfE and the Skills Funding Agency ("SFA") (an Executive Agency of DfE) are responsible for the Individual Learner Record (ILR). For the purposes of this Agreement, DfE is the data controller of the ILR Data.
- 1.4. DfE currently link NPD Data and ILR Data. DfE also link NPD Data and HESA Data. Both of these linked databases are held by DfE.
- 1.5. The data controllers set out above have separately determined whether their data shall be provided under this Agreement.
- 1.6. DfE has entered into a Data Processor Agreement with HESA & HEFCE under the Data Processor Agreement, HESA & HEFCE have agreed to allow DfE to act as Data Processor to enable linked data derived from the HESA Student Record to be released by DfE alongside data derived from the NPD and ILR so that Requesters who are authorised to receive Linked Data can receive it from one source under a single contract.
- 1.7. It has been agreed that the Linked Data specified in the Schedule can be released to the Requester subject to the terms of this Agreement.

2. DEFINITIONS

2.1 In this Agreement, the following terms shall have the following meanings:

Agreement	This agreement for the supply of Linked Data to the Requester, including the Schedule.
Agreement for the Release of Linked Data	The Agreement dated 28 January 2014 entered into between HESA, HEFCE, DfE, BIS and SFA as amended from time to time.
Commencement Date	The commencement date of this Agreement as specified in the Schedule.
Commissioner	The Information Commissioner as defined in the Freedom of Information Act 2000.
Data Controllers	DfE as data controller of the NPD Data, and the ILR Data and HESA & HEFCE as joint data controllers of the HESA Student Record.
Data Processor Agreement	The Data Processor Agreement between DfE and HESA & HEFCE dated 28 January 2014.
Data Protection Legislation	The Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection and Privacy Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (21 2003/2426) and all other applicable laws and regulations relating to processing of personal data and privacy in effect in any relevant territory from time to time, including where applicable the guidance and codes of practice issued by the

Information Commissioner and any EU regulations not in existence at the time this Agreement was executed.

Disclosing Parties	The organisations that have agreed to supply the Linked Data under this Agreement, as specified in the Schedule.
HESA Data	Any information contained within or derived from the database known as the HESA Student Record.
Individual Declaration	A declaration (in the form specified by the Data Controllers as amended from time to time) to be signed by each Permitted User before they may have access to the Linked Data and thereafter upon request of DfE.
Insolvency Event	<p>(a) A winding up petition is presented or an application is made for the appointment of a provisional liquidator or an administrator or a receiver, or a notice of intention to appoint an administrator is filed at court, or a provisional liquidator or an administrator or an administrative receiver or a receiver, is appointed, or a scheme of arrangement or a voluntary arrangement is proposed, or any moratorium comes into effect; or</p> <p>(b) A shareholders' meeting is convened for the purpose of considering a resolution to wind up (except for a members' voluntary liquidation exclusively for the purposes of a bona fide solvent reconstruction or amalgamation and where the resulting entity agrees to be bound by, or assumes, the obligations of such insolvent party under this Agreement) a resolution to wind up is passed or a winding up order is made; or</p> <p>(c) A party to this Agreement is unable to pay</p>

its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or;

- (d) An encumbrancer takes possession of, or a receiver, administrative receiver or similar officer is appointed over, the whole or any part of a party's business or assets or any other similar process in any relevant jurisdiction which has a similar or analogous effect.

Institutional Preview

The process specified in clause 26 under which higher education providers are notified of the Requester's Application for the Linked Data and may request the suppression of information relating to their organisation contained within the Linked Data.

Intellectual Property Rights

Copyrights and related rights, design rights, database rights, patents, rights to inventions, know-how or trade secrets (whether patentable or not), trade and domain and business names, logos and devices, trade and service marks, moral rights or similar intellectual property rights (whether registered or unregistered and wherever in the world enforceable) together with any extensions, revivals or renewals thereof, and all pending applications therefore and rights to apply for any of the foregoing in each case as may now or in the future exist anywhere in the world.

ILR Data

A collection of statistical data returned at various points of the academic year by providers in the further education system.

Licence End Date

The anticipated end date of this Agreement as specified in the Schedule.

Linked Data

The linked data supplied by DfE to the Requester in connection with this Agreement.

Losses

Means any and all losses, liabilities, costs, claims, proceedings, actions, judgments, damages and expenses including (without limitation) any awards and/or penalties or fines imposed by any regulator including the Information Commissioner to the extent recoverable at law (and any associated costs thereto) and any legal and other professional fees, consultancy fees and expenses on a full indemnity basis.

NPD Data

Any information contained within or derived from the database known as the National Pupil Database.

Payment	The payment (if any) to be made by the Applicant to HESA as specified in the Schedule.
Permitted Use	The purposes specified by the Requester for which the Requester and any Permitted User are authorised to use the Linked Data as set out in the Schedule.
Permitted User	A person who has been authorised by the Disclosing Parties to have access to the Linked Data to process it for the Permitted Use and who has signed and returned to DfE an Individual Declaration.
Requester	The person or organisation to whom it has been agreed to supply the Linked Data under this Agreement, as specified in the Schedule.
Schedule	The schedule to this Agreement for the supply of Linked Data and signed by the Requester by way of acceptance of this Agreement.
Security Incident	An actual, suspected or threatened unauthorised exposure, access, disclosure, use, communication, deletion, revision, encryption, reproduction or transmission of any component of Linked Data or unauthorised access or attempted access or apparent attempted access (physical or otherwise) to any Linked Data or any systems on which such Linked Data is processed or stored.
Termination Date	The Licence End Date or such earlier date if the Agreement is terminated in accordance with Clause 14.

- 2.2 The terms “data controller”, “data processor”, “data subject” “personal data”, “process”, “processing” and “sensitive personal data” shall have the meanings set out in the Data Protection Act 1998.
- 2.3 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 2.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.5 The Schedule forms part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedule.

- 2.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 2.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 2.10 Subject to clause 5.4 a reference to writing or written does not include faxes or e-mail.
- 2.11 References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 2.12 Any words following the terms including, include, in particular or for example or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 2.13 In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in the Schedule, the provision in the Schedule to this Agreement shall take precedence.
- 2.14 If any of the Data Controllers are replaced by a successor body or have their relevant powers and responsibilities transferred to another body, then references to them in this Agreement shall be taken to apply to their successors until such time as this Agreement can conveniently be updated to reflect the change.

3. DURATION

- 3.1 This Agreement will commence with effect from the Commencement Date and end on the Licence End Date, subject to earlier termination in accordance with Clause 14 (the earlier of these dates being the “**Termination Date**”).
- 3.2 The Licence End Date may be extended in response to a request by the Requester at the discretion of the Data Controllers in accordance with Clause 5.4.

4. ROLE OF THE DATA CONTROLLERS

- 4.1 For the purposes of this Agreement each of the Data Controllers shall determine the purposes for which and the manner in which their data is, or is to be, processed including:

4.1.1 Whether their data shall be provided in response to a request and, if so, the data to be provided and the terms on which it will be shared.

4.1.2 Any variations to the terms of this Agreement.

4.1.3 Any consultation which occurs between the Data Controllers is not to be interpreted as the taking of a joint decision in respect of the release of the Linked Data.

5. ROLE OF DfE

5.1 DfE is the Data Controller of the NPD Data and ILR Data.

5.2 Under the Data Processor Agreement HESA & HEFCE have agreed to allow DfE to act as data processor to enable Linked Data to be released by DfE so that Requesters who are authorised to receive Linked Data can receive it from one source under a single contract. For the avoidance of doubt DfE will only take decisions in respect of the NPD Data and the ILR Data.

5.3 Under the terms of the Data Processor Agreement, DfE is authorised by the other Data Controllers on their behalf and in accordance with their instructions to:

5.3.1 Administer the application process

5.3.2 Sign this agreement

5.3.3 Produce the Linked Data

5.3.4 Supply the Linked Data to the Requester

5.3.5 Respond to and serve notices received under this Agreement including notices relating to the destruction of the Linked Data

5.3.6 Respond to requests to publish or reproduce the Linked Data

5.3.7 Agree the terms of any attribution and caveat for the Linked Data

5.3.8 Agree any alternative disclosure control mechanism for the Linked Data

5.3.9 Agree changes to the Permitted Use or Permitted Users

5.3.10 Agree an extension to the Licence Period

5.3.11 Agree any other variation of this Agreement

5.4 The Disclosing Parties and the Requester agree that to enable DfE to efficiently respond to the circumstances set out in clauses 5.3.5-5.3.11 and having taken instructions from the other Disclosing Parties in accordance with the Data Processor

Agreements that DfE may vary the terms of this Agreement with the Requester by exchange of email provided that the emails are exchanged between the contact name and the DfE Contact as specified in the Schedule or such other individuals as the parties may notify to the other from time to time. Copies of the email exchange shall be retained by DfE and available for review by the Disclosing Parties.

6. CONSIDERATION

6.1 Where HESA is a Disclosing Party the Requester undertakes to pay to HESA the Payment (plus VAT) as a licence fee for the right to receive and use the HESA Data contained within the Linked Data in accordance with this Agreement.

6.1.1 The Payment shall be paid by the Requester within 30 days of the invoice date. For the avoidance of doubt, failure to pay the Payment to HESA within 30 days will constitute a material breach.

6.1.2 HESA will not make refunds if:

(a) For any reason the Linked Data is not in accordance with the Requester's expectations;

(b) The Requester fails or decides not to use the Linked Data for the Permitted Use;

(c) If any Linked Data is suppressed following completion of the Institutional Preview; or

(d) This Agreement is terminated in accordance with clause 14.

6.2 In consideration of the Requester agreeing to abide by the terms of this Agreement the Disclosing Parties agree to supply the Linked Data.

7. LICENCE

7.1 The Disclosing Parties grant to the Requester a non-exclusive, non-transferable licence to receive and use the Linked Data for the Permitted Use up to the Termination Date.

8. SUPPLY OF THE LINKED DATA

8.1 DfE will supply the Linked Data to the Requester on behalf of the Disclosing Parties as soon as may be practicable after the Commencement Date and on completion of the Institutional Preview if applicable. The Disclosing Parties will not be liable for any delay in the supply of the Linked Data, however caused.

9. DATA PROTECTION

- 9.1 The Requester shall ensure that the Linked Data is held in strict confidence, held securely, that appropriate technical and organisational information security and processing procedures are established and maintained to ensure that all Linked Data provided in accordance with this Agreement are sufficiently protected against any unlawful or unauthorised processing. In ensuring the security of the Linked Data, the Requester will restrict access to the Linked Data to the Permitted Users for the Permitted Use.
- 9.2 The Disclosing Parties will consider on a case by case basis the Requester's proposed Permitted Users. The Requester shall ensure that each proposed Permitted User receives appropriate training regarding data protection and security to enable the Requester to comply with principle 7 of the Data Protection Act and has signed an Individual Declaration. Where the Requester has been granted a Licence Period in excess of one year, the Requester shall ensure that on DfE's request the Permitted Users sign and return to DfE a new Individual Declaration each year.
- 9.3 The parties shall comply with the provisions of the Data Protection Legislation so far as such provisions apply to processing carried out under this Agreement and the Requester shall procure that its Permitted Users observe the provisions of the Data Protection Legislation.
- 9.4 The Requester shall not use the Linked Data to identify individuals or to inform a decision to be made about any individual. The Linked Data may not be reproduced by the Requester in a form that would allow a third party to identify or derive information about individuals who are the data subjects.
- 9.5 The Requester shall fully co-operate with the Disclosing Parties to ensure compliance with the Data Protection Legislation in respect of the Linked Data. The Requester shall notify the DfE upon receiving, and shall assist the Disclosing Parties, in complying with and responding to:
- 9.5.1 Requests for subject access from data subjects;
 - 9.5.2 An information notice, or any other notice (including in particular any deregistration, enforcement or transfer prohibition notice) served by the Information Commissioner;
 - 9.5.3 Complaints from data subjects; or
 - 9.5.4 Any investigation of any breach or alleged breach of the Data Protection legislation which relate to the Linked Data.

- 9.6 The Requester shall promptly report to the DfE any circumstance which they become aware of which:
- 9.6.1 May mean that clause 9.1 has not been complied with;
 - 9.6.2 May cause any party to breach the Data Protection Legislation as a result of processing carried out in connection with this Agreement;
 - 9.6.3 May mean that there has been unauthorised processing of any personal data derived from the Linked Data which is the subject of this Agreement; or
 - 9.6.4 if it becomes aware of any Security Incident.
- 9.7 The Disclosing Parties and their agents shall be entitled to audit the Requester's compliance with its responsibilities under this Agreement in respect of technical and organisational security measures. This may include physical inspection and copying of records. The Requester and its Permitted Users shall co-operate fully in allowing the Disclosing Parties and their agents' access to premises, documents and equipment.
- 9.8 Without prejudice to any other rights or remedies which the Disclosing Parties may have, the Requester acknowledges and agrees that damages would not be an adequate remedy for any breach by the Requester and/or the Permitted Users of the provisions of this Agreement and the Disclosing Parties shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of any provision of this Agreement by the Requester and/or the Permitted Users.
- 9.9 Immediately upon the Termination Date, the Requester undertakes to destroy all copies of the Linked Data and expunge the Linked Data from any computer, word processor or other device or medium containing it (including all documents, material or copies of such documents or materials embodying any of such Linked Data), except that information derived from the Linked Data produced for the Permitted Use which does not include any personal data or sensitive personal data, which would enable the data subjects of the Linked Data to be identified, and which uses the Standard Rounding Methodology or an agreed alternative to prevent such identification may be retained. The Requester will provide the Disclosing Parties with a written assurance that the Linked Data have been destroyed within 10 working days of the Termination Date.
- 9.10 The Requester will not transfer Personal Data or Sensitive Personal Data to any other country without the prior written approval of the Data Controllers.
- 9.11 The Requester shall not link the Linked Data to any other data without the prior written approval of the Disclosing Parties. Any application to link the Linked Data shall be made in accordance with clause 5.4.

10. PUBLICATION / REPRODUCTION OF THE LINKED DATA

- 10.1 The Requester shall not reproduce the Linked Data or include secondary analysis of the Linked Data within any publication without the prior written consent of each of the Disclosing Parties who have supplied data which is to be the subject of any such proposed publication (unless such reproduction/publication is included within the Permitted Use) (such consent may be refused in a Disclosing Party's absolute discretion in respect of any data supplied by that Disclosing Party or they may impose additional conditions on the Requester).
- 10.2 Consent is only valid if given in writing, in advance of reproduction or publication of the Linked Data.
- 10.3 The Requester undertakes that whenever the Linked Data is reproduced or used in a publication by it or on its behalf an attribution and caveat are included on behalf of the Disclosing Parties in a form previously approved in writing by DfE. In any event, the caveat must list the Disclosing Parties whose data has been used in the publication and state that they do not accept responsibility for any inferences or conclusions derived from the Linked Data by third parties.
- 10.4 For the avoidance of doubt, inclusion of the Linked Data on an internet website will be deemed to constitute publication for which the prior written consent of the Disclosing Parties is required.
- 10.5 The Requester undertakes to ensure that all statistics published are at a level of anonymisation and aggregation which will ensure that no Personal Data or Sensitive Personal Data are published, and will thereby ensure the confidentiality of individuals. More specifically, the Requester undertakes to adhere to the Standard Disclosure Control set out below in any publication or reproduction of the Linked Data unless an alternative disclosure control mechanism has been agreed in writing in advance of publication by the Disclosing Parties.

Standard Disclosure Control:

- 10.5.1 All numbers must be rounded to the nearest multiple of 5
- 10.5.2 Any number lower than 2.5 must be rounded to 0
- 10.5.3 Halves must be rounded upwards (e.g. 2.5 must be rounded to 5)
- 10.5.4 Percentages based on fewer than 22.5 individuals must be suppressed
- 10.5.5 Averages based on 7 or fewer individuals must be suppressed

10.5.6 The above requirements relate to headcounts, Full Person Equivalent and Full Time Equivalent data.

10.6 Additional charges for reproduction or publication of the Linked Data containing HESA Data may be made by HESA.

11. WARRANTIES AND INDEMNITIES

11.1 No warranty is given by the Disclosing Parties as to the quality or accuracy of the Linked Data.

11.2 The Requester warrants and undertakes to the Disclosing Parties that at all material times it will comply with the provisions of the Data Protection Legislation so far as such provisions apply to it in respect of this Agreement and more particularly that it will not make or permit or pursue any analyses which allow the identification of individuals.

11.3 Each party warrants and undertakes that it has the capacity and full legal authority to enter into this Agreement, this Agreement has been executed by its duly authorised representative, the making of this Agreement does not conflict with any of its existing obligations and once signed, this Agreement shall constitute its legal, valid and binding obligations.

11.4 The Requester shall indemnify the Disclosing Parties for any Losses arising as a result of:

11.4.1 The Requester breaching the Data Protection Legislation;

11.4.2 The Requester causing the Disclosing Parties to be in breach of any of the Data Protection Legislation;

11.4.3 The Requester breaching this Agreement.

12. REQUESTER AS DATA CONTROLLER

12.1 The Requester in making an application for Linked Data has determined the purpose and manner in which the Linked Data shall be processed and therefore assumes all of the obligations of a sole data controller upon receipt of the Linked Data.

12.2 Should it be the case that the parties referred to as the Disclosing Parties in this Agreement are found to be in breach of the Data Protection legislation as a result of the Requester's use of the Linked Data, or should the Requester breach any of the terms of this Agreement, the Requester shall indemnify the Disclosing Parties for any Losses in accordance with clause 11.4. The Disclosing Parties may terminate

this Agreement and the Requester's licence to use the Linked Data in accordance with clause 14 or seek an injunction against the Requester.

- 12.3 Should the Disclosing Parties become aware that the Requester is in material breach of the Data Protection Legislation for any processing of the Linked Data, the Disclosing Parties may report any such breach to the Information Commissioner.

13. EXCLUSION OF LIABILITY

- 13.1 The Disclosing Parties do not have any obligations to the Requester, whether in contract, tort, breach of statutory duty or otherwise, beyond their obligations expressly set out in this Agreement.
- 13.2 None of the Disclosing Parties shall have any liability (however caused) for any loss of profit, business, contracts, revenues, increased costs or expenses or any indirect or consequential loss arising under this Agreement.
- 13.3 The Disclosing Parties do not exclude or limit their liability to the Requester for:
- 13.3.1 Fraud or fraudulent misrepresentation;
 - 13.3.2 Death or personal injury caused by negligence;
 - 13.3.3 A breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or
 - 13.3.4 Any matter for which it would be unlawful for the parties to exclude liability.

14. TERMINATION

- 14.1 The Disclosing Parties acting jointly or severally may terminate this Agreement if:
- 14.1.1 The Requester commits a material breach of this Agreement and in the reasonable opinion of a Disclosing Party this has not been properly remedied within 7 days of written notice of the breach being given;
 - 14.1.2 An Insolvency Event occurs in relation to the Requester;
 - 14.1.3 The Requester is acting or has acted in a manner materially prejudicial to a Disclosing Party's goodwill and reputation or to the detriment of a Disclosing Party's relationship with government departments, funding councils, academic institutions or higher education representative bodies; or
 - 14.1.4 The Agreement for the Release of Linked Data is terminated.

14.2 The Requester may without liability terminate this Agreement immediately by written notice to the Disclosing Parties if:

14.2.1 A Disclosing Party commits a material breach of this Agreement and if in the reasonable opinion of the Requester this has not been properly remedied within 7 days of written notice of the breach being given on behalf of the Requester.

14.2.2 The Requester no longer requires the Linked Data for the Permitted Purpose.

15. CONSEQUENCES OF TERMINATION

15.1 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination provided that upon the Termination Date the Payment due from the Requester to HESA shall become immediately payable.

15.2 The following clauses shall survive the termination of this Agreement:

15.2.1 Clause 2 - Definitions

15.2.2 Clause 3 - Duration

15.2.3 Clause 4 - Role of the Data Controllers

15.2.4 Clause 5 - Role of DfE

15.2.5 Clause 9 - Data Protection

15.2.6 Clause 10 - Publication/Reproduction of the Linked Data

15.2.7 Clause 11 - Warranties and Indemnities

15.2.8 Clause 12 - Requester as Data Controller

15.2.9 Clause 13 - Exclusion of Liability

15.2.10 Clause 14 - Termination

15.2.11 Clause 15 - Consequences of Termination

15.2.12 Clause 16 – Record of Data Release

15.2.13 Clause 17 - Freedom of Information Requests

15.2.14 Clause 18 - Alternative Dispute Resolution

15.2.15 Clause 19 - Notices

15.2.16 Clause 22 - General

15.2.17 Clause 23 - Intellectual Property Rights - NPD Data

15.2.18 Clause 24 - Intellectual Property Rights - ILR Data

15.2.19 Clause 25 - Intellectual Property Rights - HESA Data

16. RECORD OF DATA RELEASE

16.1 The Requester consents to the Disclosing Parties informing government departments, funding councils, academic institutions and higher education representative bodies of the release of the Linked Data to the Requester, including a description of the Linked Data, the name and address of the Requester, the name of the recipient of the Linked Data at the Requester, the Permitted Use, the Permitted Users, the date of supply and any special conditions imposed on the supply of Linked Data as set out in the Schedule.

16.2 The Requester consents to DfE publishing the following details on its website:

16.2.1 A description of the requested NPD data and whether or not it is provided with linked data from ILR or HESA data.

16.2.2 The name of the requester.

16.2.3 The Permitted Use.

16.2.4 Details of whether the request was partially approved or approved in full.

16.3 For the avoidance of doubt, no Personal Data will be published by DfE.

17. FREEDOM OF INFORMATION REQUESTS

17.1 The Requester acknowledges that DfE, SFA and HEFCE are subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and agrees to provide all necessary assistance as required by these bodies where they are a Disclosing Party to enable them to comply with their obligations under this legislation.

18. ALTERNATIVE DISPUTE RESOLUTION

18.1 If any dispute arises in connection with this Agreement, directors or other senior representatives of each party with authority to settle the dispute will, within 10 working days of a written request from one party to the others, meet in a good faith effort to resolve the dispute.

- 18.2 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("ADR notice") to the other parties to the dispute requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 20 working days after the date of the ADR notice.
- 18.3 No party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or one of the other parties has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 18.4 Nothing in this clause 18 shall prevent any party seeking a preliminary injunction or other judicial relief at any time, if in its judgement such action is necessary to prevent irreparable damage.

19. NOTICES

- 19.1 Any notice to be given pursuant to this Agreement;

19.1.1 Shall be in writing; and

19.1.2 Subject to clause 5.4 shall be delivered by hand or sent by first class post, recorded delivery or by commercial courier to the party due to receive such notice at its address set out below or such other address as any party may notify to the other from time to time:

DfE (on behalf of the Disclosing Parties):

DEPARTMENT FOR EDUCATION

Sanctuary Buildings,

Great Smith Street London SW1P 3BT

For the attention of the Head of Education Data Division

The Requester: at its address stated in the Schedule

For the attention of the Contact

19.1.3 In the absence of evidence of earlier receipt any such notice shall be deemed to have been given or received:

- (a) If delivered by hand, when delivered; or

- (b) On the second business day following the day of sending if sent by post or recorded delivery; or
- (c) On the date and at the time that the courier's delivery receipt is signed if sent by commercial courier.

20. FORCE MAJEURE

20.1 The Disclosing Parties shall not be deemed to be in breach of this Agreement or otherwise liable to the Requester for a failure to perform any obligation to which it is subject under this Agreement to the extent that it is prevented from performing the relevant obligation by any event or circumstance beyond its reasonable control ("an Event of Force Majeure"). Where an Event of Force Majeure occurs or arises, the Disclosing Parties shall as soon as may be practical give notice of this event to the Requester and the time for performance of the relevant obligation shall be deemed to be extended by a period equal to the duration of the Event of Force Majeure.

21. BRIBERY

21.1 The Parties are aware of the Bribery Act 2010 and shall comply with the terms and conditions.

21.2 No party nor any employee or agent of that party shall offer, give or agree to give to another party, its staff or agents any inducement or reward for doing or refraining from doing or having done or refrained from doing any act in relation to the obtaining or execution of this Agreement or any other agreement or for showing or refraining from showing any favour or disfavour to any person in relation to this Agreement or any other agreement.

22. GENERAL

22.1 This Agreement may not be assigned or otherwise transferred in whole or in part by the Requester without the prior written consent of the Disclosing Parties.

22.2 The Requester shall not be entitled to sub-licence any of the rights granted to it by the Disclosing Parties under this Agreement.

22.3 Subject to clause 5.4 no variation to this Agreement shall take effect unless it is in writing and signed by all parties to this Agreement.

22.4 For the purpose of section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties state that they do not intend any terms of this Agreement to be enforced by any third parties; but any third party right which exists or is available independently of that Act is preserved.

- 22.5 This Agreement, and the Individual Declarations contain the whole agreement between the parties and supersede any prior written or oral agreement between them in relation to its subject matter and the parties confirm that they have not entered into this Agreement on the basis of any representations that are not expressly incorporated into this Agreement other than those contained within the Linked Data Request Application Form and the Information Security Questionnaire.
- 22.6 The rights and remedies of either party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by one party to the other nor by any failure of, or delay by the said party in ascertaining or exercising any such rights or remedies. The waiver by either party of any breach of this Agreement shall not prevent the subsequent enforcement of that provision, and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 22.7 Any provision of this Agreement which is held invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof.
- 22.8 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same contract. No counterpart shall be effective until each Party has executed at least one counterpart.
- 22.9 This Agreement shall be governed by and construed in accordance with English Law and, to the extent disputes arising out of or relating to this Agreement are not settled under the procedures referred to in Clause 18, the Requester submits to the exclusive jurisdiction of the English Courts.

23. INTELLECTUAL PROPERTY RIGHTS - NPD DATA

- 23.1 All Intellectual Property Rights in the NPD Data and in any database containing the NPD Data compiled by DfE are vested and shall remain vested in DfE. The Requester acknowledges that the NPD Data is derived from databases compiled and owned by DfE and that DfE retains all rights in the NPD data and such databases under the Copyright Rights in Databases Regulations 1997.

24. INTELLECTUAL PROPERTY RIGHTS - ILR DATA

- 24.1 All Intellectual Property Rights in the ILR Data and in any database containing the ILR Data are vested and shall remain vested in DfE. The Requester acknowledges that the ILR Data is derived from databases compiled and owned by DfE and that DfE retains all rights in the ILR Data and such databases under the Copyright Rights in Databases Regulations 1997.

25. INTELLECTUAL PROPERTY RIGHTS - HESA DATA

- 25.1 All Intellectual Property Rights in the HESA Data and in any database containing the HESA Data compiled by HESA are vested and shall remain vested in HESA. The Requester acknowledges that the HESA Data is derived from databases compiled and owned by HESA and that HESA retains all rights in the HESA Data and such databases under the Copyright Rights in Databases Regulations 1997.

26. INSTITUTIONAL PREVIEW OF HIGH PROFILE DATA REQUESTS

- 26.1 Prior to the release of any Linked Data containing HESA Data to the Requester HESA, in its absolute discretion, may notify the higher education providers whose data is included in the Linked Data of the specification and proposed usage of the Linked Data by the Requester. These higher education providers may request that some or all of the data relating to their institution is not released to the Requester. In such cases HESA will require DfE as data processor for HESA and HEFCE to comply with the wishes of any such higher education provider and not transfer that part of the Linked Data to the Requester. No reduction in the Payment or other form of compensation will be due to the Requester.



Department
for Education

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Reference: DFE-00275-2016



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